XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000060286

CA 80/97

(2)

APPEAL OF PRISONER

No. 1728/9 Name रमेश बाई पति

Father's name कपाल भैंवर

Residence ..... Age .....

Sentenced to आजीवन कारावास On 27/11/96

Under section 302 भा० द० वि० by माननीय सत्र न्यायाधीश, बालाघाट (म०प्र०)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent .....

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 1728/9 Name रमेश बाई w/o कपाल

Confined in सेन्ट्रल जेल Jail Raipur (M.P.)

No. 07/202 Dated 1/1/ 1997

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अतिरिक्त जिला एवं सत्र न्यायाधीश एवं प्रथम अपर सत्र न्यायालय बालाघाट

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न :- ~~जेलर की अनुशंसा~~ सत्र न्यायाधीश की निर्णय प्रति सिवाय

Superintendent
Central Jail, Raipur. (M.P.)
Jail

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.....

Forwarded to the .....

High Court of Madhya Pradesh
JABALPUR
10 JAN 1997
Reg. No. 6
Receipt Clerk

Date of receipt in Appellate Court .....

(P. T. O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(15)

आदेश पत्रक

मामला क्रमांक Cr. A. 80/97 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

21-3-2006

Mr. V.D. Bajpai, Senior Advocate with Mr. R.K. Tiwari, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. D.K Gwalre, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Code of Criminal Procedure, accused/appellant Khemin Bai has questioned legality and correctness of the judgment of conviction and order of sentence dated 27-11-1996 passed by the Sessions Judge, Raipur, in Sessions Trial No.142/96, whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code for committing the murder of her husband namely, Kripal, sentenced her to undergo imprisonment for life.

The case of the prosecution, in brief, is that Santram Mirza @ Mehar (PW-1), Panch of Village: Tor, lodged the First Information Report (Ex.P-1) in Police Station: Dharsiwa to the effect that at about 1 a.m., Dinesh Chauhan & Ramkhilawan Verma came to his house and informed that Khemin Bai has set her husband Kripal on fire after pouring kerosene on his body while he was sleeping. On receiving this information, he went to the house of Kripal and saw that he was

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मामला क्रमांक G.A.80/97 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

lying on the ground in the courtyard and was writhing in pain. Birajo Bai & Sukbati Bai were sitting by his side. Kripal identified him and he was saying "save me once". On enquiry from Kripal, he said that his wife Khemin Bai set him on fire after pouring kerosene on his body when he was sleeping and she ran away after closing the door from outside. On being caught by fire, he raised screams on which Sukbati Bai & Kheduram entered the house after opening the door, one Thanwar brought water and the fire was extinguished. The cot and the bedding of Kripal were burnt and smell of kerosene was emanating from the room. Search was made about Khemin Bai, but her whereabouts could not be traced out. They brought tractor and Kripal was taken to Dharsiwa hospital for treatment. Kripal was conscious and he was talking on the way. However, after reaching the hospital, Kripal succumbed to the burn injuries sustained by him.

Based on this report, the Station House Officer, Police Station: Dharsiwa registered Crime No.14/96 under Section 302 of the I.P.C. and proceeded to the hospital. He prepared the Panchnama (Ex.P-3) of the body of Kripal after giving notice Ex.P-2 to the Panchas. Thereafter, he left for the scene of occurrence and took into possession one tin box containing small quantity of kerosene, one cot in burnt condition, one bedding, one red-yellow colour bedding and one matchbox under Ex.P-4. Site plan (Ex.P-6) of the place of occurrence was prepared by the Patwari. Post-mortem on the body of Kripal was conducted in Mekahara Hospital, Raipur by Dr. D.C. Jain (PW-14), Professor & Head of the Department. Site plan (Ex.P-17) was prepared by the Investigating Officer.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	- 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Raipur, who in turn committed the case to the Sessions Judge, Raipur for trial.

The prosecution in order to establish charge against the accused, examined 15 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which she denied the prosecution evidence appearing against her and stated that she was not at residence, she is innocent and she has been falsely implicated in the crime.

Learned Sessions Judge after conclusion of trial and hearing respective counsel, convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mr. V.D. Bajpai, learned Senior Advocate with Mr. R.K. Tiwari, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. D.K. Gwalre, learned Deputy Govt. Advocate on behalf of the State/respondent.

The fact of the death of Kripal on account of extensive burn injuries up to 90% is not in dispute.

As far as involvement of the accused/appellant in setting her husband Kripal on fire after pouring kerosene on his body is concerned, there is no eyewitness to the incident and the case rests on circumstantial evidence i.e. the dying declaration made by Kripal before the witnesses. In order to rest conviction based on the circumstantial evidence, as per the settled law, the Court

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

has to ascertain and see that the crime is established against the accused based on the circumstantial evidence on the following points: -

1. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
2. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
3. the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
4. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

Now, we shall proceed to examine the evidence available on record. Santram Mirza @ Mehar (PW-1), former Panch of the village who lodged the First Information Report (Ex.P-1) in which he mentioned that on his reaching to the house of Kripal and on enquiry, Kripal informed him that his wife i.e. the accused/appellant namely, Khemin Bai set him on fire after pouring kerosene on his body, has turned hostile and not supported the prosecution case to the extent of oral dying declaration made by Kripal before him. He has been declared hostile at the request of Public Prosecutor, but even then, he has stated that Kripal had not made any dying declaration before him. Similarly, Kheduram Nishad (PW-2), Dinesh Singh Chauhan (PW-3), Sukhbati (PW-4) & Ganesh Ram (PW-7) have also

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	-5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

turned hostile and they have not supported the prosecution case that deceased Kripal made dying declaration before them.

However, Thanwar (PW-5) has stated in his evidence that on hearing the screams he woke from sleep, went to the house of Kripal and saw that Kripal was raising cries "save save" and his room was burning. Kripal informed that his wife Khemin Bai has set him on fire. He extinguished the fire and came out of the room. In cross-examination (para 3) by counsel for the accused, he has stated that when he reached the house of Kripal he was writhing in pain and was not able to speak. Even on enquiry, he was not able to tell anything, he was saying, "I am burnt, I am burnt". Kripal has not said anything to him. Even he did not enquire from him that as to how he received the burn injuries. Again, in para 4, he has stated that Kripal said that Khemin Bai ran away after setting him on fire, but how he received the burn injuries he has not informed. Again, he said that it is incorrect to say that Kripal was not in a condition to speak. His house is adjacent to the house of Kripal and when Kripal said about setting him on fire by Khemin Bai, Kheduram & Sukhbati Bai were also present and they heard.

Now, the question, which arises for consideration before this Court, is as to the reliability on the evidence of this witness {Thanwar (PW-5)}, whether he is the wholly reliable witness, as no other witness has supported the prosecution case. Therefore, the evidence of this witness requires close scrutiny about veracity of the evidence given by him. Even this witness has stated that Kheduram & Sukhbati Bai were present when the deceased made oral dying declaration and they heard the same. But, Sukhbati Bai & Kheduram have not

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stated in their evidence regarding the oral dying declaration made by the deceased. Other witnesses namely, Santram Mirza @ Mehar (PW-1), Dinesh Singh Chauhan (PW-3) & Ganesh Ram (PW-7) have also not stated anything that deceased Kripal made any dying declaration regarding setting him on fire by accused Khemin Bai. Therefore, the evidence of this witness {Thanwar (PW-5)} does not find corroboration from other witnesses whose presence at the time when he was there is admitted.

In the circumstances, in this background, if we examine the evidence of Thanwar (PW-5), he has also taken the somersault. In the first instance, in examination-in-chief he has stated that deceased Kripal made dying declaration regarding setting him on fire by the accused, whereas in cross-examination in para 3, he has given a totally contradictory evidence to what he has said in the examination-in-chief and said that even Kripal was not able to speak and he was writhing in pain. Neither Kripal informed him regarding setting him on fire nor he enquired from Kripal that how he received the burn injuries. Again in para 4 of his cross-examination, he has stated that Kripal made dying declaration that Khemin Bai has set him on fire. Therefore, this witness cannot be considered to be wholly reliable and trustworthy, because other persons who were said to be present at the scene have not supported his version.

In the circumstances, this witness {Thanwar (PW-5)} is not wholly reliable and in the background which has been discussed above, it is not safe to rely on the evidence of this witness for holding accused Khemin Bai responsible for the act of setting Kripal on fire. Apart from that, there is no other circumstantial evidence

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available on record, which connects the accused with the crime in question. Even it has come in the evidence of witnesses that the accused was in the habit of consuming liquor and used to quarrel with the accused. Therefore, for the foregoing reasons, finding of the trial Court convicting and sentencing the accused for commission of offence under Section 302 of the I.P.C. cannot be sustained.

In the result, the appeal succeeds and the same is allowed. The accused is acquitted of charge under Section 302 of the I.P.C. and conviction & sentence awarded under that Section are set aside. She be set at liberty forthwith, if not required in any other case.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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